



OFFER AND AWARD

ARIZONA DEPARTMENT OF EDUCATION
Contracts Management Unit
1535 West Jefferson Street, Bin #37
Phoenix, Arizona 85007

SOLICITATION NO. ED04-0055

OFFER

The Undersigned hereby offers and agrees to furnish the materials, service(s) or construction in compliance with all the terms, conditions, specifications and amendments in the solicitation.

U.S. FOODSERVICE

Company Name

THOMAS M. KERTIS

Name of Person Authorized to Sign Offer

4650 W. BUCKEYE RD.

Street Address

DIVISION PRESIDENT

Title of Authorized Person

PHOENIX AZ 85043

City

State

Zip Code

Thomas M. Kertis 4-23-04

Signature of Authorized Person Date of Offer

Telephone Number: 602.269.7241

Facsimile Number: 602.352.3444

Offeror's Arizona Transaction (Sales) Privilege Tax License Number:

07405011-A

Offeror's Federal Employer Identification Number:

36-3732339

Acknowledgement of Amendment(s):
(Offeror acknowledges receipt of amendment(s) to the Solicitation for Offers and related documents numbered and dated

Amendment No. Date

1 - MARCH 31, 2004

Amendment No. Date

ACCEPTANCE OF OFFER AND CONTRACT AWARD

(For State of Arizona Use Only)

CFDA No. 10.550

Your Offer, dated 4/23/04, is hereby accepted as described in the Notice of Award. You are now bound to perform based upon the solicitation and your Offer, as accepted by the State.

This Contract shall henceforth be referred to as Contract Number ED04-0055.

You are hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until you receive an executed purchase order, contract release document, or written notice to proceed, if applicable.

State of Arizona

Awarded this

13th

day of

May 2004

[Signature]

Procurement Officer

ATTACHMENT 7.1 PRICES

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The Offeror shall indicate below the proposed firm fixed per-case drop fee (price), which shall include 60 days free dwell time, transportation, and delivery, for each option:

001	Preparation site (prep-site) Option. For distributing basic and further-processed commodities to food preparation sites with a minimum of ten (10) or twenty (20) cases-per-drop.	\$2.74 Price per Case
002	Warehouse Option. For distributing basic and further-processed commodities to Recipient Agency-operated, or other designated commercial warehouses, with a minimum of one hundred (100) cases-per-delivery.	\$2.59 Price per Case
003	Pick-Up Option. For issuing basic and further-processed commodities across the Offeror's warehouse platform, with a minimum of one hundred (100) cases-per-pick-up.	\$2.24 Price per Case
004	Excess Storage Fee.	\$1.10 Fee per Case
005	Private Storage Fee.	\$1.10 Fee per Case

If ADE makes payment to the Contractor within 7 calendar days after acceptance of goods and/or services and proper Contractor invoice, the above quoted price, excluding sales tax, shall be discounted by 1%.

Notice: If the transaction privilege (sales) taxes are not described and itemized on the offer, the State will assume that the price(s) offered includes all applicable taxes.

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1. **Definition of Terms Used in these Uniform Terms and Conditions.** As used in this Solicitation, and any resulting Contract, the terms listed below are defined as follows:
 - A. *"Attachments"* means all items required of the Offeror as part of the offer.
 - B. *"Contract"* means the combination of Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, Specifications and Scope of Work, the offer and any best and final offers, and any amendments to the Solicitation or the Contract; and any terms implied by law.
 - C. *"Contractor"* means any person who has a Contract with a state government unit.
 - D. *"Days"* means calendar days unless otherwise specified.
 - E. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - F. *"Offer"* means bid, proposal or quotation.
 - G. *"Offeror"* means a vendor who responds to any type of solicitation.
 - H. *"Procurement Officer"* means the person duly authorized to enter into and administer contracts and make written determinations with respect to the Contract or their designee.
 - I. *"Solicitation"* means an invitation for bids (IFB), a request for proposals (RFP) or a request for quotation (RFQ).
 - J. *"Subcontract"* means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party for performance of any work, for the making or furnishing of any material or any service required for the performance of the Contract.
 - K. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
2. **Governing Law and Precedence.**
 - A. Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona.
 - B. Arizona Procurement Code. The Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7, are a part of this Contract as if fully set forth in it.
 - C. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
 - D. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State, the following shall prevail in the order set forth below:
 - (1) Special Terms and Conditions;

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- (2) Uniform Terms and Conditions;
 - (3) Scope of Work;
 - (4) Specifications;
 - (5) Exhibits; and
 - (6) Documents referenced or included in the Solicitation.
3. **Authority.** This Contract is issued under the authority of the Procurement Officer who signed this Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials directed by an unauthorized state employee or made unilaterally by the Contractor are violations of the contract and of applicable law. Such changes, including unauthorized written contract amendments, shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
4. **Contract Interpretation and Amendment.**
- A. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any term used in this document.
 - B. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
 - C. Written Contract Amendments. The Contract shall be modified only through a written contract amendment within the scope of the Contract signed by the Procurement Officer.
5. **Records.** Under A.R.S. § 35-214 and §35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
6. **Severability.** The provisions of this contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the contract.
7. **Relationship of Parties.** The Contractor under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
8. **Assignment and Delegation.** The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.
9. **General Indemnification.** To the extent permitted by A.R.S. §41-621 and §35-154, the State of Arizona, shall be indemnified and held harmless by the Contractor for its vicarious liability as a result of entering into this Contract. Each party to this Contract is responsible for its own negligence.
10. **Indemnification - Patent and Copyright.** To the extent permitted by A.R.S. §41-621 and §35-154, the Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of

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any patent, trademark or copyright arising out of contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

11. **Subcontracts.** The Contractor shall not enter into any subcontract under this Contract without the advance written approval of the Procurement Officer. The subcontract shall incorporate by reference the terms and conditions of this Contract. A list of all proposed subcontractors must be provided with the Offer.
12. **Compliance with Applicable Laws.** The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
13. **Payments.** The Contractor shall be paid as specified in the Contract. The payment must comply with the requirements of A.R.S. Titles 35 and 41.
14. **Advertising and Promotion of Contract.** The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
15. **Property of the State.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
16. **Third Party Antitrust Violations.** The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor toward fulfillment of this Contract.
17. **Right to Assurance.** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent or ability to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the Contract under paragraph 22 of the Uniform Terms and Conditions.
18. **Stop Work Order.**
 - A. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 - B. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
19. **Cancellation for Conflict of Interest.** The State may cancel this Contract without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

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20. **Gratuities.** The State may, by written notice terminate this Contract, in whole or in part, if the State determines that employment or a gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the Contractor.
21. **Suspension or Debarment.** The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been disbarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other government body.
22. **Written Notice of Concern.** Upon receipt of the written notice of concern, the Contractor shall have ten (10) days to provide a satisfactory response to the State. Failure on the part of the Contractor to address adequately all issues of concern may result in the State resorting to any single or combination of the following remedies:
- A. Cancel any contract in whole or in part;
 - B. Reserve all rights or claims to damage for breach or any covenants of the contract;
 - C. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material in non-compliance with the specifications, the actual expense of testing shall be borne by the contractor; and
 - D. In case of default, the State reserves the right to purchase materials, or to complete the required work in accordance with the Arizona Procurement Code. The State may recover any actual excess costs from the contractor by:
 - (1) Deduction from an unpaid balance;
 - (2) Collection against the bid and/or performance bond; or
 - (3) Any combination of the above or any other remedies as provided by law.
23. **Termination for Convenience.** The State reserves the right to terminate the Contract in whole or in part at anytime when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in Arizona Administrative Code R2-7-701 shall apply.

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24. Termination for Default.

- A. In addition to the rights reserved under Paragraphs 18 through 23 of the Uniform Terms and Conditions, the State reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the contract. The Procurement Officer shall mail written notice of the termination and the reasons for it to the Contractor.
- B. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- C. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in reprocurring the materials or services.

25. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

26. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and penalties described in Paragraphs 18 through 23 of the Uniform Terms and Conditions.

27. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destinations identified in the Solicitation.

28. Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of this Contract. The State will make reasonable efforts to secure such funds.

29. Contract Claims. All contract claims and controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and A.A.C. R2-7-901 through R2-7-937.

30. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

31. Audit. Pursuant to A.R.S. §35-214, at any time during the term of this contract and five years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the contract or subcontract.

32. Non-Discrimination. The Contractor shall comply with State Executive Order No. 75-5 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

33. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

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34. Force Majeure.

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots, strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

Force majeure shall not include the following occurrences:

- (1) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
 - (2) Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - (3) Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- B. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- C. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

35. Applicable Taxes.

- A. Applicable Taxes. The State will pay only the rate and/or amount of taxes identified in the Offer and in any resulting Contract.
- B. Tax Indemnification. The Contractor and all subcontractors shall pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to, hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- C. IRS W9 Form. In order to receive payment under any resulting contract, the Contractor must have a current IRS W9 Form on file with the State of Arizona.

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- 36. Notices.** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the "Notice Page", unless otherwise stated in the Contract.

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1. **Definition of Terms Used in These Special Terms and Conditions.** As used in these Special Terms and Conditions, the following terms, in addition to those terms defined in Section 3, Paragraph 1, have the following meaning:
- A. "ADE" means the Arizona Department of Education.
 - B. "Basic Commodities" means items purchased and/or made available by the USDA for shipment directly to the Contractor for delivery as ordered by Recipient Agencies and other designated receiving sites. Although the USDA makes available approximately eighty (80) basic commodities, only about thirty-five (35) are made available at any one time. Basic commodities are made available in the following two (2) groups:
 - (1) GROUP A: meats, fruits and vegetables, which are available sporadically and are in high demand.
 - (2) GROUP B: grains and other support items, which are normally available year-round in controlled quantities.

Approximately thirty five percent (35%) of the basic commodities are "dry" items, fifty percent (50%) are frozen and fifteen percent (15%) are chilled. The average case size is 1.1 cubic feet with a net content of 37.5 pounds. Commodity cases are clearly marked with the USDA shield and the inscription "Donated from the people of the United States of America".
 - C. "Bill of Lading" means a document listing items being delivered that is provided the receiver or consignee at the time of delivery.
 - D. "Bonus" means donated food provided by the USDA that doesn't reduce the entitlement dollars (funds) allowed for each program.
 - E. "CDS" means Commodity Distribution System.
 - F. "Central Warehouse" means a facility of a recipient agency where all USDA donated foods for a recipient agency are received for further distribution to food preparation sites. This includes central warehouses that are located adjacent to, or as part of, a central production facility.
 - G. "COMM CODE" means commodity code used by USDA.
 - H. "Commercial Distributor" means any private enterprise that warehouses *and* delivers foods to customers on a regularly scheduled basis.
 - I. "Consignee" means the receiving facility where commodities are shipped, sometimes referred to as the receiver.
 - J. "Department" means the Arizona Department of Education.
 - K. "Donated Foods and Commodities" (used interchangeably) means foods donated by the USDA to eligible recipient agencies for use in meal preparation. For purposes of this Contract, the terms "donated foods" (commodities), "items", "products" and "issues" (when used as nouns) have the same meaning.
 - L. "Entitlement" means the amount of funds allocated to the Department, by program. Each recipient receives a "Fair Share" of the entitlement or Planned Assistance Level (PAL). Donated foods offers are tracked against each agency's PAL or entitlement level.

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- M. *"Farm Policy"* means a policy established by Congress every five (5) years to address the policies and procedures affecting the agricultural industry in the United States. The policy determines the products that are purchased by the Department of Agriculture to maintain price stability in the market.
- N. *"Fiscal Year (FY) for Food Distribution"* means the time frame under which State contracts run. The State time frame is July 1 through June 30. Data about receiving and shipping will be based on this time frame.
- O. *"Food and Nutrition Services (FNS)"* means the branch of the USDA that performs the daily operations and establishes policies and procedures for the Food Distribution Program.
- P. *"Forwarding Notice"* means a document prepared by the USDA to notify the Department and consignee (Contractor or processor) who will supply the basic commodity and the shipping period when it will be delivered.
- Q. *"Free Dwell Time"* means specified periods of time when no storage fee is charged.
- R. *"Further Processed Commodities"* means items, such as beef patties, manufactured from basic commodities then shipped directly from USDA or State sources to processors, who then ship the finished products directly to Recipient Agencies or the Contractor for distribution.
- S. *"Information Technology"* means all computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, firmware, vendor support and related services, and equipment (including without limitation, computers, data processors, microprocessors, calculators, programmable systems and other electronic devices).
- T. *"Recipient Agencies"* means agencies determined by the State as being eligible to receive donated foods for their use in preparing foods. Types of recipient agencies providing food service are schools, charitable institutions, soup kitchens, summer camps and summer feeding programs. The program concerned with issuing foods for home use to *needy families* is administered by the Arizona Department of Economic Security (DES) and is outside the scope of this Contract.
- U. *"Recoup"* means the reorganization of product onto pallets.
- V. *"Shipper"* means the trucking company hired by the USDA awarded processor to deliver product to the consignee (Recipient Agency, a processor or the Contractor).
- W. *"State Agency"* means the Department of Education.
- X. *"Surplus Purchases"* means products purchased by the USDA to prevent prices from decreasing due to an overabundance of farm product in the marketplace. Provided to the Department to distribute either as entitlement or bonus commodities.
- Y. *"Trucking Company"* means trucking firms or companies hired by the USDA contracted processors or distributors/warehouse to deliver products to the consignee (Recipient Agency, a processor or the Contractor).
- Z. *"USDA"* means the United States Department of Agriculture.
- AA. *"USDA Wholesale Value"* means the value of the product purchased by the USDA and published in a monthly publication. Replacement value for loss or theft is based on the current market value.

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2. Changes.

- A. The Procurement Officer may at any time, by written order, and without notice to the sureties, if any, make mutually acceptable changes within the general scope of this Contract in any one or more of the following:
 - (1) Description of services to be performed;
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.); and
 - (3) Place of performance of the services.
 - (4) Method of shipment or packing.
 - (5) Place of delivery.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the Procurement Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the contract.
- C. The Contractor must assert its right to an adjustment under this provision within 30 days from the date of receipt of the written order. However, if the Procurement Officer decides that the facts justify it, the Procurement Officer may receive and act upon a proposal submitted before final payment of the Contract.
- D. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Procurement Officer shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Contract Claims provision of this Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as changed.

3. Insurance Requirements.

- A. Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least A VII in the current A.M. Best's, the minimum insurance coverage(s) below:
 - (1) **Commercial General Liability**, with minimum limits of \$1,000,000 per occurrence, and an unimpaired products and completed operations aggregate limit and general aggregate minimum limit of \$2,000,000. Coverage shall be at least as broad as the *Insurance Service Office, Inc. Form CG25031185*, issued on an Occurrence basis, and endorsed to add the State of Arizona and the Arizona Department of Education as an additional Insured with reference to this contract. The policy shall include coverage for:
 - (a) Bodily Injury;
 - (b) Broad Form Property Damage (including completed operations);
 - (c) Personal Injury;

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- (d) Blanket Contractual Liability;
 - (e) Products and Completed Operations, and this coverage shall extend for one (1) year past acceptance, cancellation or termination of the services or work defined in this contract; and
 - (f) Fire Legal Liability.
- (2) **Business Automobile Liability**, with minimum limits of \$1,000,000 per occurrence combined single limit, with *Insurance Service Office, Inc. Declarations* to include Symbol One (Any Auto) applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any auto. The policy shall be endorsed to add the State of Arizona and the Arizona Department of Education as an Additional Insured with reference to this contract.
- (3) **Workers Compensation and Employers Liability** Insurance as required by the State of Arizona Workers Compensation statutes, as follows:
 - (a) Workers Compensation (Coverage A): Statutory Arizona Benefits; and
 - (b) Employers Liability (Coverage B): \$500,000 each accident;
\$500,000 each employee/disease; and
\$1,000,000 policy limit/disease.
 - (c) Policy shall include endorsement for All State coverage for state of hire.
 - (d) Worker's Compensation coverage is not required if the Contractor is a sole proprietor. See Attachment 7.6, Sole Proprietor Waiver.
- B. The State of Arizona and the Arizona Department of Education reserves the right to request and receive certified copies of all policies and endorsements within ten (10) calendar days of contract signature.
- C. Certificates of Insurance acceptable to the State of Arizona and the Arizona Department of Education shall be issued and delivered prior to the commencement of the work defined in this Contract, and shall identify this Contract and include certified copies of endorsements naming the State of Arizona and the Arizona Department of Education as Additional Insured for liability coverages. The certificates, insurance policies and endorsements required by this paragraph shall contain a provision that coverages afforded will not be cancelled until at least 30 days prior written notice has been given to the State of Arizona and the Arizona Department of Education. All coverages, conditions, limits and endorsements shall remain in full force and effect as required in this Contract.
- D. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the State of Arizona and the Arizona Department of Education may immediately terminate this Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of Arizona and the Arizona Department of Education shall be repaid by the Contractor upon demand, or the State of Arizona and the Arizona Department of Education may offset the cost of the premiums against any monies due to the Contractor. Costs for coverages broader than those required, or for limits in excess of those required, shall not be charged to the State of Arizona or the Arizona Department of Education. Contractor and its insurer(s) providing the required coverages shall waive their rights of recovery against the State of Arizona, its Departments, Employees and Officers, Agencies, Boards and Commissions.

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4. **Contract Term.** The term of this Contract shall commence on the date the Procurement Officer signs the Offer and Acceptance Form, signifying ADE's acceptance of the Offeror's proposal and will remain in effect through June 30, 2005, unless terminated, canceled, or extended as otherwise provided herein.
5. **Option to Renew Contract.** This Contract shall not bind nor purport to bind ADE and the Contractor for any contractual commitment in excess of the original contract term. ADE shall have the right, at its sole option, to renew the Contract, in one-year increments, not to exceed a total contracting term of five years. If ADE exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the option terms.
6. **Contract Pricing.** Prices under this Contract are all-inclusive and contain all labor costs (labor benefits, payroll overhead, insurance, workmen's compensation fees, all taxes, profits, overheads and all other related cost factors). Charges for each delivery option must include all storage, delivery and distribution costs. ADE will not reimburse any item other than the all-inclusive prices contained in Attachment 7.1, Prices.
7. **Price Adjustments.**
 - A. Prices shall remain as offered for the initial term of this Contract, though, after that initial term the Contractor may request a price adjustment for products or services delivered under this Contract. **Any requested price adjustment shall be filed with the Procurement Officer at least ninety calendar days prior to the expiration date of the then current Contract term.** Any price adjustment shall be fully documented to indicate reason or cause for the request.
 - B. The Procurement Officer will analyze the request and compare it against market prices, trade publications, current percentage increase in the food industry wholesale labor costs as reported by the U.S. Bureau of Labor Statistics and/or the Consumer Price Index. If the Procurement Officer and the Contractor agree to a price adjustment, it shall be effected through a written bi-lateral contract amendment. Price adjustments shall become effective only at the time of Contract renewal and upon signature of the Procurement Officer, or as mutually agreed, though, at no time, shall upward price adjustments be retroactive.
8. **Contractor's Obligation Regarding Confidentiality.**
 - A. Due to the sensitive nature of the information maintained by ADE, the Contractor acknowledges that all information disclosed to it concerning ADE's operations during performance of this Contract shall not be disclosed to third parties without the ADE's prior written consent.
 - B. The Contractor shall establish and maintain procedures and controls, acceptable to ADE, for the purpose of assuring no information contained in its records, obtained from ADE, or from others in carrying out its functions under this Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under this Contract. Persons requesting such information shall be referred to the Procurement Officer.
 - C. All proprietary information and all copies thereof shall be returned to ADE upon completion of the work for which it was obtained or developed.
9. **Key Contractor Personnel.** It is essential the Contractor provide an adequate staff of experience personnel, capable of and devoted to the successful accomplishment of work performed under this Contract. The Contractor must assign specific individuals to key positions of responsibility as follows: Two full time customer service support staff to work exclusively on USDA commodities. The Contractor shall provide the names of the following positions as a point of contact: Customer Service Supervisor, Operations Manager, Transportation Manager and Warehouse

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Manager (as identified on Attachment 7.4). Once assigned to work under this Contract, key personnel shall not be removed or replaced without prior express written approval of the Program Contact.

10. **Removal of Contractor Personnel.** The Contractor agrees to utilize only experienced, responsible and capable employees in the performance of the work. ADE may require that the Contractor remove from the job, by this Contract, employees who endanger person or property or whose continued employment under this Contract is, in the opinion of ADE, not justified due to unacceptable performance of duties, or is inconsistent with the interests of ADE.
11. **Employment of State Personnel.** The Contractor shall not employ any person or persons in the employ of the State of Arizona for any work required by the terms of this Contract, without prior written approval of the Procurement Officer.
12. **Acceptance of Services.** Determination of the acceptability of work will be made by ADE. Work shall be completed in a responsible and professional manner and in accordance with the Statement of Work, schedules, test plans, or performance/operating standards, which are incorporated in each work assignment.
13. **Ownership.** All deliverables and/or other products of this Contract (including, but not limited to, all software documentation, reports, records, summaries and other matter and materials prepared or developed by the Contractor in performance of this Contract) shall be the sole, absolute and exclusive property of ADE, free from any claim or retention of rights thereto on the part of the Contractor, its agents, subcontractors, officers, or employees, with the exception of third party proprietary software packages which may be procured under this or separate agreement.
14. **No Guaranteed Quantities.** The Contractor understands and hereby acknowledges that ADE makes no representations nor guarantees the Contractor any minimum or maximum number of units of service to be provided under this Contract.
15. **Cooperation with Other Contractors and Subcontractors.** The Contractor shall fully cooperate with other ADE contractors, subcontractors and assigns and shall carefully plan and perform its own work to accommodate the work of other ADE contractors. The Contractor shall not intentionally commit or permit any act which will interfere with the performance of work by any other ADE contractors.
16. **Non-exclusive Status.** ADE reserves the right to have the same or similar services provided by other than the Contractor.
17. **Warranty of Services.**
 - A. The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications, attachments and exhibits made a part of this Contract. ADE's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.
 - B. In addition to its other remedies, ADE may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.
18. **Liquidated Damages.**
 - A. If the Contractor fails to deliver supplies, services or required reports within the time specified in this contract, or any contract extension, the Contractor shall, in place of actual damages, pay to ADE as fixed,

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agreed, and liquidated damages, for each calendar day of delay, the sum of \$50.00 (See Special Terms and Conditions, Paragraph 33. E).

- B. Alternatively, if delivery or performance is so delayed, ADE may terminate this Contract in whole or in part under the Termination for Default provision of this Contract and in that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the State may reasonably obtain delivery or performance of similar supplies or services. The liquidated damages shall be in addition to excess costs under the Termination for Default provision of this Contract.
- C. The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Termination for Default provision of this Contract.

19. Performance Surety.

- A. The Contractor will be required to furnish surety to guarantee faithful performance of the Contract in the amount of \$1,000,000 to defray the cost to the State Agency of redirecting inbound shipments, and/or transferring stock in the event of contract cancellation, and also to cover cost of services and product. The performance surety shall be provided to the Procurement Officer within ten (10) days after Contractor's receipt of the Procurement Officer's request for same. The performance surety shall be delivered to:

Arizona Department of Education
Contracts Management Unit, Bin #37
Attn: Roely Scholte
1535 West Jefferson Street
Phoenix, Arizona 85007

- B. Acceptable performance sureties are limited to:
 - (1) A one-time performance bond underwritten by a company licensed to issue performance bonds in the State of Arizona; or
 - (2) A certified check or cashier's check.
- C. Failure to accomplish timely delivery of said bond or other such surety as approved by the Procurement Officer shall constitute a material breach of this Contract and may, at ADE's sole option, result in termination of the Contract in accordance with the Termination for Default provision of this Contract.
- D. The Procurement Officer will return the performance surety to the Contractor as soon as practicable upon completion of the Contract.

20. Transition Activities.

- A. Upon the expiration of this Contract, ADE anticipates a continued need for the Contracted services specified herein. In the event that a Contract is awarded to a new Contractor, there shall be a transition of service period. During this period, the outgoing Contractor shall work closely with the new Contractor's personnel and/or ADE staff to ensure a smooth and complete transfer of duties and responsibilities.
- B. All transition activities will be coordinated by ADE's Program contact. A transition plan will be developed in conjunction with the outgoing Contractor to assist the new Contractor and/or ADE staff to implement the transfer of duties.

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- C. ADE reserves the right to determine which projects nearing completion will remain with the outgoing Contractor.
21. **Report Standards.** Reports or written materials prepared by the Contractor in response to the requirements of this Contract shall be submitted in a format approved in advance by the Program Office.
22. **Date-Related Data Year 2000 Issues.** Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
23. **Subcontract(s).** No subcontract which the Contractor enters into with respect to performance under this Contract shall in any way relieve the Contractor of any responsibility for performance of its duties. The Contractor is responsible for contract performance whether or not subcontractors are used. The Contractor shall accept full responsibility for and guarantee the performance of any subcontractor used in performance of services under this Contract.
24. **Subcontracted Warehouse(s).**
- A. USDA Donated Foods shall not be stored at any facility other than the Contractor's warehouse **without express written approval of ADE**. A formal agreement shall be signed between the two (2) warehouses and shall be reviewed to determine storage facility meets USDA minimum requirements (See Exhibit 8.12). **Each subcontracted warehouse shall have a designated commodity specialist and a back-up commodity specialist on staff and available for services under this Contract.**
 - B. The Contractor shall provide a completed "Offeror's References" (Exhibit 7.2 of the Solicitation Document) to the Procurement Officer prior to entering into any subcontracted warehouse agreement.
 - C. The Contractor shall obtain a performance bond or proof of adequate insurance to cover any losses caused by the subcontracted warehouse. ADE will hold the Contractor responsible and liable for and pursue recovery of funds or product losses, thefts or damages occurring at subcontracted warehouses.
 - D. The Contractor shall perform a minimum of one (1) annual warehouse review of each subcontracted warehouse facility. (See Exhibit 8.13)
 - E. The Contractor shall complete and keep on file any and all annual subcontracted warehouse reviews, the latest health inspection report and pest control reports to the Procurement Officer as part of the Contractor's annual warehouse review.
 - F. ADE will physically count any USDA inventory at any and all subcontracted warehouses as soon as practical prior to the expiration date of this Contract.
25. **Spin-off of Storage and Delivery of Commodities.** The Contractor shall provide a contingency plan for the spin-off of storage and delivery of commodities, should volume be exceeded due to expansion of the program or the Contractor's commercial accounts. The Contractor's charges shall not exceed those agreed to in this Contract.
26. **Contract Modifications.** Any change in this Contract, including the Scope of Work, must be accomplished by a formal, written contract modification, signed and approved by and between the duly authorized representative of the

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Contractor and the Procurement Officer. The Contractor expressly and explicitly understands and agrees that no other method and/or other document, including correspondence, acts, or verbal communications by or from any person, shall be used or construed as a modification or supplementation to this Contract.

27. **Contractor's Accounting Requirements.** The Contractor shall establish and maintain an accounting system meeting generally accepted accounting principles as adopted by the Financial Accounting Standards Board. The accounting system shall maintain records pertaining to the tasks defined in the Scope of Work and any other costs or expenditures made under this Contract.
28. **Americans With Disabilities.** The Contractor shall comply with the Americans With Disabilities Act of 1990 (Public Law 101-336) and the Arizona Disability Act of 1992 (A.R.S. §41-1492 *et seq.*), which prohibit discrimination on the basis of physical or mental disabilities in delivering Contract services or in the employment or advancement in employment of qualified individuals.
29. **Meeting Requirements.** The Contractor shall ensure its personnel attend monthly commodity meetings. ADE will provide the times, dates and location of training to the Contractor once award has been made.
30. **Addition to the Product Line.** ADE reserves the right to add to the product line contained in this Contract. This includes the addition of processed items, which may be placed in the Contractor's warehouse on consignment for distribution (warehousing and delivery) at the established Contract prices (listed in Attachment 7.1). No investment on the part of the Contractor is required for this product.
31. **Technical Assistance.** ADE will provide technical assistance to the Contractor prior to and during Contract start-up to assure a smooth transition. Continuous support and communication is needed to keep services under this Contract smooth. At a minimum, ADE will meet with the Contractor's Warehouse Manager, Customer Service Manager, Operations Manager and Transportation Manager and assigned staff, monthly, to cover procedural or other issues as necessary. It is the Contractor's responsibility to establish internal controls through employee training and procedure manual development for Contract services.
32. **Information Technology.** Computer capabilities are necessary to track inventory and to produce reports for ADE. The ADE web site will assist the Contractor with required communications, inventory, ordering, tracking and reporting requirements necessary for tracking and distribution of USDA product to Recipient Agencies. The CDS will act as a communications gateway between the Contractor, ADE and schools.
- A. The Contractor must employ a state-of-the-art personal computer (PC) in order to perform services under this Contract. The PC may be stand-alone and dedicated to this Contract, or it may be a component of the Contractor's networked system if it meets the following minimum requirements:
- (1) IBM compatible, Pentium 2 Computer;
 - (2) 32MB Ram Memory;
 - (3) 200 MB Memory hard drive;
 - (4) MicroSoft Windows 2000 or NT operating system;
 - (5) Electronic transmission capability/modem;
 - (6) Adequate back-up capabilities to protect and assure security of data;
 - (7) Capabilities to run internet browser;

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- (8) Internet Explorer 6.0 or better;
- (9) Shall have Netscape Navigator 4.0 or better; and
- (10) Shall have own Internet connection.
- B. ADE will train and provide technical support to the Food Distribution web site. The Contractor will be responsible for maintenance and support of their hardware.
- C. The web site will operate in a stand-alone computer. If necessary, data input screens are available to enter product orders and refusals when notified by Recipient Agencies. Recipient Agency order information shall be submitted to the Contractor through the web site.
- D. The web site will track beginning inventory, incoming shipments, entitlement and allocations to Recipient Agencies, refusals or additions to allocations, shipments by program and by Recipient Agency, returned adjustments or dump adjustment and ending inventory figures by commodity item. Requirements, by category are:
 - (1) Inbound Shipments. After ADE is notified by the USDA of an incoming shipment, the information will be transferred from ADE to commercial distributor via fax.
 - (2) Shipment Receipt. After Contractor has received each shipment, the information shall be submitted to ADE by courier within 5 workdays via hard copy.
 - (3) Notice of Arrival (NOA). Based on shipments received, ADE will notify the Recipient Agencies of what products are available to them through the allocation process. This NOA information will be available to Contractor. The Recipient Agencies will then notify the Contractor of which products they wish to order via ADE web site. The Contractor will process each order into Contractor internal system to prepare for delivery to school.
 - (4) Damages, Mis-shipments, Exceptions. At the Inventory Reconciliation Monthly meeting, Contractor shall notify ADE of all cases that were mis-shipped or damaged during corresponding month. Information must be reported on the Monthly Reconciliation Report, (see Exhibit 8.10).
- E. Identifier Codes.
 - (1) The ADE web site will track each Recipient Agency by an identifier code, called a County/Type/District (CTD) number. The CTD is a six (6) digit, alphanumeric field assigned by ADE. The Contractor, if using an alternate customer numbering system, must be able to cross-reference alternate customer numbers with ADE's CTD customer numbers used in the CDS. The CTD customer number must be included in **ALL reports** provided through the Contractor's system.
 - (2) Each commodity and processed food item is identified by a commodity (COMM) code (also referred to as the Item Code), assigned by the USDA. The COMM code is a twelve (12) digit, alphanumeric field.

33. Fees and Assessments.

- A. Collection of Fees for Services.

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- (1) Fees for distribution (warehousing and delivery) services will be invoiced to Recipient Agencies by the Contractor. Invoices may be submitted to Recipient Agencies after each delivery or monthly, at the option of the Contractor. Invoices must include a summary of delivery tickets for each delivery site. Referenced delivery tickets shall be listed in numerical sequence and show the total number of units delivered. The fee-for-services will be based on Contract, per-case charge which may be different for different services. For example, there may be different fees for deliveries to food preparation sites or warehouses, or for pick-ups at the Contractor's warehouse.
- (2) If a Recipient Agency becomes more than sixty (60) days delinquent, the Contractor may suspend deliveries **after due notice and approval by ADE Program contact**. Recipients will receive notification from the Contractor prior to a delivery of a hold due to non-payments. **With the approval of ADE**, those accounts with frequent payment delays or insufficient funds checks may be classified as C.O.D. ship or no-ship status until that particular Recipient's payment history improves. The Contractor may charge a late fee of one and one-half percent (1½%) interest to Recipient Agencies not paying within sixty (60) days.
- (3) The Contractor also may offer a delivery discount incentive program if bills are paid within thirty (30) days by Recipient Agencies.

B. Collection of State Administrative Fees.

- (1) The Contractor shall invoice, collect and remit to ADE, a State Administrative Fee of twenty-five cents (\$0.25) per case, paid by each Recipient Agency, to support State costs. The Contractor shall collect the State Administrative Fee along with the stipulated fee for service. This fee shall be added to the per-case amount as designated in the price schedule (Attachment 7.1). Example: Price per-case + \$0.25 Administrative Fee = Fee Invoiced.
- (2) Remittance to ADE of the collection of Administrative Fees shall be **based on deliveries rather than collections** to conform to the Contractor's monthly delivery reports.
- (3) Accordingly, ADE will invoice the Contractor based on a thirty (30) day interval with invoices due thirty (30) days net, with one to one and one-half percent (1-1½%) surcharge assessed per month, or fraction thereof, to the Contractor for late payments.

C. Cost of Transferring Product

- (1) When this Contract expires or is terminated, the inventory on hand must be transferred to another Contractor. The in-place Contractor must transfer all products on exchangeable pallets to the new Contractor's warehouse facilities. The residual product will be picked up by the new Contractor in trailer-load lots (straight or mixed items). **All transfer costs will be absorbed by the new Contractor.**
- (2) The in-place Contractor will allow thirty (30) days from Contract termination/expiration for the transfers to be made without assessing any additional storage charges to ADE. Transfers will be scheduled by ADE within the in-place Contractor's regular working hours. A minimum of forty-eight (48) hours will be allowed between the arrival of transfer orders at the Contractor's warehouse and the scheduled times for pick-up or delivery on exchangeable pallets. Transfers will be made in terms of the in-place Contractor's standard pallet and load sizes and stacking ties.
- (3) The in-place Contractor, newly awarded Contractor and ADE shall agree to the conditions of the transfer in a formal document. All three (3) parties shall review and document product as it is

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received for damages and out of condition product. The in-place Contractor is responsible for in-kind product replacement.

D. Payment for Shortages and Damages

The Contractor shall be financially responsible for all commodities released into his care and shall assume and bear the risk of all loss, damage, or theft to the commodities while the same is in his possession or control. The Contractor must carry insurance on the products in his care, be financially responsible for shortages and damages, and submit reports as may be required. Damages shall include infestation of product due to improper storage conditions, as well as physical damage to containers, including serious rust.

E. Late Fee for all Required Reports

The Contractor will be assessed a late fee of fifty (\$50.00) dollars per workday, beginning the first workday following the due date of required Reports. **This provision will become effective the first work-day of the fourth month of the initial Contract Term.** This late fee will not be assessed during the first three months of the initial Contract Term. (See Scope of Work, Paragraph 16(A) through (G))

F. Excess Storage

The Contractor may assess the ADE, on a monthly basis, a per-case charge for any excess inventories based on the free dwell time of 60 days. Offeror's are to provide a fee per-case charge for excess storage.

- 34. Contractor Records.** The Contractor shall maintain records and data fully accounting for the receipt and disposition for all USDA donated foods. Documents must be available for review at any reasonable time upon request from either the USDA, ADE, the Auditor General's Office, or the U.S. Comptroller General. The Contractor may be audited on site or may be required to deliver documents to any Arizona State agency. Documents such as delivery tickets may be audited in full or on a random sample basis.

SECTION 5 SCOPE OF WORK

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1. **Purpose.** The purpose of this solicitation is to contract with a commercial food distributor to warehouse and deliver United States Department of Agriculture (USDA) donated foods (commodities) to approximately 350 recipient agencies statewide.

2. **Warehouse Operations.**

- A. The Contractor shall provide sufficient warehouse space to absorb all inbound freight, including abnormal peak loads, at no additional cost to ADE or Recipient Agencies. The exact amount of cases varies depending on the flow of inbound products and the outflow of products to Recipient Agencies. The large increase of products in November through February coincides with the largest Recipient Agencies' (Schools) program year.
- B. To ensure the Contractor's warehouse is capable of covering peak times, ADE requires the warehouse to provide a minimum of forty-five thousand (45,000) square feet of useable storage space for USDA Commodities. This specified square footage is based on ADE's inventory (basic and further-processed) and the private storage space schools may need to store commodities past free dwell times. **The projected approximate storage areas are:**

STORAGE AREA	NUMBER OF ITEMS	INVENTORY AT PEAK	PEAK PALLETS	PEAK SQUARE FOOTAGE
DRY	35	36,112	509	9,934
FROZEN	79	58,192	1,000	24,260
CHILLED	22	11,278	377	9,021
TOTALS	136	105,582	1,886	43,224

- C. The Contractor will rotate all stock on a first-in, first-out basis **and provide evidence of stock rotation.** The Contractor must be able to identify when a product was received and from what shipment (Delivery Order number). ADE may implement a "hold or recall" if a complaint is received or the product does not meet USDA specifications. Information on where the product is located at the warehouse or to whom and what quantity has been distributed must be provided to ADE **within twenty-four (24) hours from a request** to the Contractor by ADE.
- D. Brace or level stop-off shipments for further movement and remove debris from rail cars.
- E. Ensure that warehouse facility has a security system to prevent theft from outsiders and employees.
- F. Sanitation and Temperature Requirements.
 - (1) The Contractor's warehouse shall comply with the United States Food, Drug and Cosmetic Act and State Food Laws. The Contractor shall maintain a current copy of the firm's most recent health inspection for ADE review at all times.
 - (2) Contractor shall conduct a pest and rodent control program within the first week of each month and documentation shall be maintained in Contractor's file. Employees shall be trained to detect signs of weevil or rodent infestation to prevent any problems from spreading. **Contractor shall notify ADE within twenty-four (24) hours** of discovery of the occurrence of any problems.
 - (3) The Contractor shall not store donated food with chemicals or products that could possibly drip on commodities and/or packaging.

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- (4) The Contractor shall adhere to the following guidelines for temperatures and handling of products in storage areas. Additional information about each USDA product will be provided by ADE upon request.
- (a) Dry Groceries - Regular Care. These products are predominantly canned items which can be stored between fifty to seventy (50 to 70) degrees F. Shelf life decreases if temperature exceeds seventy (70) degrees or falls below fifty (50) degrees. The dry storage area should be well ventilated with forced air.
 - (b) Dry Groceries - Special Care. These products are packaged, bagged or canned items which will require, either refrigeration to prevent infestation, or quality slippage or dry storage with special care to stacking and storing to prevent crushing or deterioration of product. Items such as flour may also be stored in the freezer, if chilled storage is full.
 - (c) Frozen. These items require storage at zero (0) degrees F and below. (See Appendix 9.2)
 - (d) Chilled (Excluding Special Care). These items must be stored in refrigerated space at thirty-five to forty-one (35 to 41) degrees F. Fresh produce may suffer chill damage at thirty-five (35) degrees F; therefore, these products should be held at higher temperatures. Also, some products may require higher levels of humidity. (See Appendix 9.2)
 - (e) Chilled (Special Care). Instructions for storage will be provided to the Contractor upon product arrival at Contractor's warehouse.
- (5) The Contractor shall insure that thermometers are placed within storage locations to easily determine temperatures accurately.
- (a) A reliable monitoring system must be in place and identified in the method of approach to ensure storage areas maintain correct temperatures and that equipment failures will be observed and remedied before any product is damaged. All areas shall have a daily temperature check. The checks must be verified by ADE during warehouse review process.
 - (b) An incident report must be submitted to ADE **immediately** when/if temperatures exceed the requirements listed above in Paragraph F. (4)(a) through (e).

3. Private Warehouse Storage.

- A. Commodity quantities offered sometimes exceed the current space availability of schools. The largest quantity of product is stored during the summer months of June through August. Summer private storage volume averages **approximately** 4,000 cases. Most of the private storage items are frozen.
 - B. The Contractor may provide private storage space at a fee, as identified on Attachment 7.1, for those Recipient Agencies needing the service. The Contractor shall make arrangements directly with the Recipient on the terms and conditions of private storage.
- (1) Any private storage fee escalation must be submitted **to ADE for approval prior** to administration of new fee.

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- (2) The Contractor shall maintain a record of the dates on which Recipient Agencies request items to be moved to private storage. The record shall identify the items, quantities and the actual dates the items were moved.
 - C. USDA donated food in private storage shall be removed physically from State Agency inventory in the Contractor's warehouse. Any costs associated with the separation of these items from open stock shall be included with the costs of warehouse service. Product may be either stored as straight or mixed pallets per storage type of the product. Pallets or cases shall be marked with the Recipient Agency's name.
 - D. The Contractor shall indicate transfer of product to private storage on the Monthly Reconciliation Report under "shipped." Private storage cases are no longer included in State Agency inventory the month the transfer occurs. The State Agency bills the Contractor the State Administrative Fee at the time the transfer occurs based on quantity shipped. The Contractor shall either bill the Recipient Agency the delivery fee up front with no charge upon actual delivery or wait to bill upon delivery.
 - E. Private storage of donated food may be shipped with commodity deliveries and included in the ten (10) or twenty (20) case minimum delivery fee.
4. **Inbound Shipments.** The Contractor shall accept all shipments in accordance with USDA and State Agency regulations.
- A. Schedules and Methods.
 - (1) The scheduling of inbound shipments of basic commodities is primarily controlled by the USDA, although the State Agency exercises some control on a monthly basis. The scheduling of inbound shipments of further-processed commodities also is controlled by the USDA with the State Agency indicating preferred shipping periods. Final shipment dates of further-processed commodities depend on the turn-around time needed by the processing vendors.
 - (2) Most commodities are scheduled for inbound shipment at predictable shipping periods; therefore, the Contractor will know in advance the types and quantities of food to be received. However, some volatile price basic commodity items such as chicken and beef are purchased by the USDA on short notice; therefore, knowledge of inbound shipments on these items might be limited to a shorter lead time of two (2) to three (3) weeks.
 - (3) The State Agency will notify the Contractor of expected shipping periods for basic commodities by providing copies of Forwarding Notices and USDA Receiving Report. (See Exhibit 8.2 and 8.9). The Contractor will maintain an inbound shipment log (Exhibit 8.11), which will project receipts at least two (2) months in advance. The purpose of the log is to augment communications between the State Agency and the Contractor to control inbound shipments and inventory levels. The Contractor shall communicate this information via hard copy.
 - (4) All inbound shipments of basic commodities will arrive one (1) item per load (1,000 to 2,000 cases, more or less) in full or partial loads. USDA looks for the most cost-effective method to ship donated food. The Kansas City Commodity Office (KCCO) prefers to ship by rail rather than truck; however, rail access is not a requirement. The majority of the shipments will arrive by rail or piggyback instead of truck shipments. If a load does come in by rail, USDA may send it to a "pool yard" first and then to the distributor.
 - (5) There are three possible drop sites in Arizona for USDA commodities: Phoenix, Flagstaff and/or Tucson.

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- (6) The Contractor may contact the USDA supplier (or shipper) concerning methods and/or dates of shipments. The name of the supplier, shipping dates and method of shipping may be obtained from a copy of the USDA "Forwarding Notice" (Form KC-269), (Exhibit 8.2), forwarded to the Contractor by the State Agency. Generally, the shipper, without an additional charge, will rearrange schedules for arrival of vehicles for unloading at consignee's (Contractor, Recipient Agency or processor) premises. To do so benefits both truckers and consignee. The shipper generally works with the consignee in situations like these, but the amount of time to unload will depend on the trucker's tariff detention rules which will govern. Although a trucking company has no obligation to make these appointments, the State Agency should be contacted if attempts to find a solution between the Contractor and shipper cannot be achieved.
 - (7) ADE reserves the right to make direct shipments to Recipient Agencies as may be deemed in the best interest of the program.
- 5. **Freight Charges.** The Contractor will be assessed and be responsible for a diversion charge if the USDA driver is asked to deliver product to a warehouse location other than the one indicated on the Forwarding Notice and Bill of Lading.
- 6. **Receiving Procedures.**
 - A. The Contractor is responsible for all commodities received; therefore the same care taken in receiving commercial items must be exercised with USDA donated foods. Loads must be inspected on arrival for product condition, temperature, damage and infestation.
 - B. USDA instructions for receiving truck and rail deliveries are described in Shipment and Receipt of Food Requirements, FNS Instruction 709-5 (See Exhibit 8.3).
 - (1) The Contractor shall unload the rail car, piggyback trailer or truck on all palletized shipments. Pallets must be exchangeable and in good condition. The USDA contracted driver is responsible for unloading to the tailgate only on unpalletized shipments. Shipments must be unloaded at the Contractor's expense. Contractor's employees should be advised of these procedures to prevent billing from drivers for unloading or re-palletizing.
 - (2) The Contractor shall inspect all loads for condition, temperature, damage and infestation, as well as to verify count and acceptability of product. If product condition is unacceptable, **the Contractor shall call ADE immediately** as defined in FNS Instruction 709-5.
 - (3) The Contractor shall notify the truck or railroad contact (listed on the Forwarding Notice) if commodities arrive damaged or otherwise unacceptable and complete FNS-57, Form, Over, Short or Damage Report. (See Exhibit 8.4)
 - (4) All food suitable for human consumption is salvaged for program use and may not be sold to salvage companies.
 - (5) The Contractor shall be reimbursed for out-of-pocket expenses incurred in *any unusual* recouping of donated food or unloading expenses.

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- (6) A USDA Grade or Poultry Inspector is not required to be present or to break the seal on the truck; however, an inspector may show up for spot checks at any time. The poultry vendor shall notify the Poultry Inspection Office that poultry product is to be shipped to consignee. The USDA is responsible for inspector's fees, when applicable.

7. Outbound Deliveries / Annual Throughput.

- A. The Contractor may expect to deliver approximately five hundred thousand (500,000) cases of product to Recipient Agencies and/or warehouses statewide. Approximate annual throughput per storage location is as follows: (For definition of Special Care, refer to page 34, paragraph 2 (a) through (e)).

<u>Storage Area</u>	<u>Approx. Annual Throughput</u>
Dry - Regular	156,399 cases
Dry - Special Care	8,020 cases
Frozen	277,288 cases
Chilled - Excluding Special Care	50,102 cases

- B. The majority of cases will be delivered to Maricopa and Pima Counties. In the course of the Contract year the Contractor will serve an average of three hundred (350) Recipient Agencies statewide (Refer to Exhibit 8.5 for a listing of delivery sites).

8. Orders from Recipient Agencies.

- A. ADE provides every Recipient Agency with the ability to place all orders on the ADE web site. (Exhibit 8.7). Contractor will have access to all web site orders to begin processing order for delivery. The Contractor shall have a dedicated 800-phone number and fax number available for Recipient Agencies to use.
- B. Recipient Agencies should order well enough in advance for the Contractor to process and deliver cases ordered by delivery site. Recipients must place an order a minimum of seventy-two (72) working hours in advance of the delivery day. In some cases, due to two (2) day truck runs, Recipients may be asked to order ninety-six (96) working hours in advance.

9. Delivery Options and Fees. There are three delivery options, with varying drop fee requirements. Each Recipient Agency must designate an option. The options are: (1) prep-site option, (2) warehouse option and (3) pick-up option. Delivery option is by district not delivery site.

- A. Preparation Site (Prep-Site) Option. The drop-fee rate for the Prep-Site Option is determined by the program participation level as follows:
- (1) Schools having an average daily participation (ADP) level of 250 students or fewer, as determined by ADE, are eligible for the ten (10) case minimum fee.
 - (2) Summer Food Service Programs have a ten (10) case minimum drop-fee requirement.
 - (3) Schools having an average daily participation (ADP) level of 251 or more must meet the twenty (20) case minimum drop fee requirement.

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- B. Warehouse Option. Recipient Agencies selecting the Warehouse Option must order a minimum of one hundred (100) cases at a time and receive product across their staging area. In return, Recipient Agency warehouses should provide exchangeable pallets, if the receiving pallets are in good condition. If pallets are not in good condition, Recipient warehouses may choose not to exchange pallets. Any product that is damaged as a result of a pallet that is not in good condition will be replaced free of charge by the Contractor.
- C. Pick-up Option. The Pick-up Option requires Recipient Agencies selecting the Pick-up Option to order a minimum of one hundred (100) cases per pick-up. Recipient Agency must also have exchangeable pallets and refrigerated truck.

10. Delivery Shortages.

- A. If the Contractor initially fails to deliver a product in stock (a validated request, listed on the bill of lading or invoice), the Recipient Agency should note the shortage on the delivery paperwork. **The driver and Recipient Agency must both sign the invoice.** It is the responsibility of the Recipient Agency to document any shortages or damages on the invoice. The Contractor will discount the delivery bill by the delivery cost of the case or cases involved.
- B. The Recipient Agency will contact the Contractor to reorder shorted or refused damaged product with its next order. The Contractor must comply, at no extra charge. However, if the Recipient Agency is in need of the product by the next day the contractor must deliver product without the minimum case requirement. Any other arrangements must be agreed to by the Recipient Agency.
- C. If the Recipient Agency accepts delivery of product in error, the Contractor may charge a restocking fee. Any re-stocking fee must be submitted to ADE and **approved by ADE prior** to charging the administration fee.

11. Delivery Sites.

- A. A Recipient Agency may elect to have donated foods delivered to a food preparation site, a designated host site, a self-operated or commercial warehouse, or pick up commodities at the Contractor's warehouse. Contractor will be given a thirty day notice if a Recipient Agency changes its delivery option. Separate or congregate orders will be submitted by Recipient Agencies indicating each drop site.
- B. The Contractor shall make deliveries statewide. This includes Littlefield Elementary District, with access only through Utah or Nevada, and the Navajo Mountain Boarding School, approximately five (5) miles north of the Arizona/Utah border reachable by thirty (30) miles of dirt road in Arizona. If the Contractor cannot make deliveries as designated, the Contractor may make arrangements with a carrier, **only upon written approval by ADE.** Copies of pre-approved subcontracts with private carriers shall be provided to ADE prior to implementation. **ADE will minimize the number of deliveries to Littlefield Elementary District and Navajo Mountain Boarding School to reduce costs to the Contractor. ADE will work with the Contractor, Littlefield Elementary District and the Navajo Mountain Boarding School to develop a delivery schedule.** These two (2) Recipient Agencies shall not be charged additional delivery fees beyond the quoted delivery cost for Prep-Site delivery.

- 12. **Delivery Frequency and Times.** Deliveries or warehouse issues shall be made on a regular, pre-scheduled day of the week, Monday through Friday, as determined by the Contractor and Recipient Agencies. Deliveries shall be available on a weekly basis to all Recipient Agencies as long as the ten (10) or twenty (20) case minimum fee is paid.

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- A. Delivery drops shall be made between the hours of 6:00 a.m. and 2:30 p.m. MST. The Contractor shall accommodate the Recipient Agency with delivery within the Recipient Agency's hours of operation. The driver or Contractor must call the Recipient Agency if the delivery will not arrive on the scheduled day or before 2:30 p.m.
- B. Recipient Agencies will notify Contractor of school holidays. Contractor must notify Recipient Agency of any holiday when delivery will not occur or when delivery will incur an extra charge due to the holiday.
- C. Recipient Agencies may refuse deliveries at no charge if delivery conditions are not met by the Contractor.

13. Delivery Drop Areas.

- A. The Contractor shall deliver donated food in designated staging areas. Recognized staging area for preparation site deliveries shall be inside of the door of a walk-in grocery area, freezer or cooler. For smaller agencies, product placement beside a cooler or freezer unit is acceptable. Drivers are not required to store on the shelves, stock shelves or rotate stock. Recipients shall not help the driver unload. If Recipient Agencies elect to provide assistance, Contractor's driver should not allow Recipients to board the vehicle.
- B. Contractor's driver shall request an authorized receiver to verify accuracy of delivery and condition of the products. Each bill of lading or delivery ticket shall be signed by the Recipient Agency. Variations to the norm, such as shortages or damages, shall be noted on each ticket and initialed by both the driver and Recipient Agency.
- C. The recognized drop and shipping area for a Warehouse Option delivery is across the receiving platform. All issues destined for a Recipient Agency's warehouse delivery or pick-up must be made on returnable or exchangeable pallets, in good condition.

14. Delivery Vehicles.

- A. The Contractor shall transport frozen and chilled foods in properly refrigerated vehicles. Dual compartment vehicles with moveable bulkheads should be used for all deliveries. Delivery vehicles may contain donated foods with other foods commercially supplied as long as other terms of the Contract are satisfied. If donated foods and non-food items are transported together, the Contractor will take necessary steps to ensure food items are not contaminated with agricultural or other chemicals. Frozen, chilled and dry foods must be delivered under acceptable and strictly controlled temperatures and sanitary conditions in accordance with the National AFDOUS Code as endorsed by the U.S. Food and Drug Administration.
- B. The number of delivery vehicles required to meet Contract requirements depends on the size and number of trucks the Contractor employs.
- C. The Contractor's delivery vehicles shall be regularly maintained by either the Contractor or private entity.

15. Damaged Inventory.

- A. Product damaged in the Contractor's warehouse, or during Contractor transport or delivery, shall be replaced at the expense of the Contractor. The value of basic commodities to be replaced will be based on the current USDA wholesale value of the commodity. The value of further-processed commodities will be based on the current wholesale value of the product.
- B. Damaged cases will be reported on the Monthly Reconciliation Report for the month the product is dumped. The Contractor will replace basic commodity products with equal or better product or establish an account

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for ADE to invoice after year-end physical inventory has been reconciled. The Contractor must confer with the Recipient Agency for preference of replacement or cash reimbursement for the loss of further-processed product. **Documentation of purchases or reimbursement is required and shall be provided upon requests.**

- C. The replacement product shall be marked by case or pallet to indicate that it is a USDA donated food substitute. ADE will coordinate with the Contractor to ship large quantities of replacement product to a single Recipient. Delivery tickets or bills of lading must indicate that substitution has occurred. The inventory will then be shipped out of ADE inventory through web site.
- D. Damaged or spoiled commodities, after being received by the Contractor, must be **reviewed by ADE prior** to being taken to the dump. Damaged commodities may not be donated to Soup Kitchens or Charitable Institutions **without prior approval by ADE**. Product that is damaged should be removed and put in a separate location until it can be recouped or dumped. Recouped product should be put in boxes with USDA markings.
- E. Shortages of Basic Commodities may be reconciled at the end of a Contract year with overages on the basis that if the market value of overages (as determined by ADE) exceeds the value of shortages, there will be no remittance required. However, if the value of shortages exceeds the value of overages, the Contractor must remit the difference to ADE as required by the USDA.

16. Inventory Practices.

- A. Free Dwell Time. ADE procedures allow a free dwell time of sixty (60) days for Recipient Agencies to remove their allocations. A Recipient Agency could refuse an offer within a prescheduled two (2) week period to obtain a credit against the draw down of its share of the entitlement.
 - (1) Recipient Agencies not refusing or removing product will be charged a storage fee by ADE. Any inventory that has not been ordered or refused by the Recipient Agency will be reallocated to other Recipient Agencies to remove inventory.
 - (2) The Recipient Agency must either remove product at the end of the free dwell time or place product in private storage. Any fee charged by the Contractor for private storage shall be reasonable. Once product is placed in private storage, ADE cannot reallocate product to other Recipients, since it is in the possession of a specific Recipient Agency.
- B. Physical Inventory. Physical Inventory is accomplished only once at the end of the school year. A midyear test count may be performed in January. The midyear inventory spot checks specific inventory, checks the warehouse and performs an Internal Control Review. It usually requires one day to complete. A year-end physical count of all inventory, excluding private storage is conducted. If private storage is stored within the same facility as ADE's inventory, it must be segregated prior to date physical inventory is conducted. Physical inventory is conducted during the last week of June. Three (3) teams are able to complete the count and check for discrepancies between the latest Contractor's Warehouse inventory report within two (2) to five (5) days depending on inventory level at the time of count. No USDA commodities will be received from USDA or delivered to Recipient Agencies during the year-end physical inventory. The warehouse review is completed at the same time as the year-end physical inventory with the assistance of the Contractor's warehouse manager.
 - (1) Physical inventory is accomplished by three groups made up of three (3) people, ADE's auditor, a Food Distribution Program representative and the Contractor's representative. Sufficient equipment shall be available to allow for simultaneous counting of the freezer, cooler and dry commodities.

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The equipment (lifts) shall be provided with safety cages and safety belts to hold teams (maximum of three (3) team members per lift) to conduct the physical inventory. The Contractor will furnish freezer outerwear (freezer coats) to ADE and Audit members of the freezer teams. Any additional costs incurred by ADE to conduct the physical count, due to lack of cooperation by the Contractor, will be billed to the Contractor.

- (2) All members of the inventory team must agree to the final number on each product counted and sign their names on all Contractor inventory count sheets. Once the count is completed and signed by the Contractor, the figures are final. All sheet shall be provided to ADE at the end of the counting.
- C. Computing Overages and Shortages. ADE's auditors compare physical inventory figures to ADE's book inventory figures. Basic commodity overages and shortages will be settled by computing the value of shortages and overages based on the current USDA Wholesale Value report provided by ADE. If the value of the shortages exceeds the value of the overages, a monetary value for the differences will be owed ADE within thirty (30) days after settlement. A settlement must arrive no later than October 1st annually. If the value of overages exceeds the value of shortages, no settlement is required by either party. The July beginning book balances will be adjusted to correspond with the reconciled physical inventory figures.
- D. Further-processed commodities. Physical and book inventories are compared separately from basic commodity inventory. **The value of end-product overages is not credited against the value of the shortages.** Further-processed product is owned by a specific Recipient; therefore, product shortages must either be replaced with equal or better product or a monetary refund including the value of the commodity in the end product plus the processing costs per case returned to the Recipient. The Contractor must determine who is the owner of the overages by reviewing shipping documents and product pick lists. ADE will work with the Contractor to assign unidentified product to Recipients to move inventory quickly.
- E. Private storage. Physical inventory counts will be verified with the Contractor's inventory balances and with each Recipient Agency. It is the responsibility of the Contractor to reconcile any private storage differences directly with the Recipient Agencies. Differences shall be settled with replacement product or cash reimbursement.
- F. Monthly Reconciliation.
 - (1) The Contractor's book inventory must be reconciled to physical inventory and submitted by the 20th of each month. To facilitate this reconciliation, the Contractor will provide ADE, a **Monthly Reconciliation Report** showing beginning inventory, shipments received, deliveries to Recipient Agencies to include transfers to private storage, dumps, adjustments and ending inventory by commodity code and further-processed product. (Sample report at Exhibit 8.10)
 - (2) Variances between ADE and the Contractor records will be resolved before the end of the month. Discrepancies can occur either in receiving or shipping.
 - (3) ADE verifies one hundred percent (100%) of the monthly shipping records with the Recipient Agency. The Contractor will be responsible for researching, verifying and, if necessary, correcting data on variances noted by the Recipient.
 - (4) The Contractor shall investigate reasons for ending inventory being a negative number. All negative balances will be adjusted to zero each month, whether a reason can be obtained or not.
- G. Inventory Information. Replacement product shall be marked by case or pallet to indicate that it is an USDA donated food substitute. ADE will work with the Contractor to ship large quantities of replacement product

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to a single Recipient. Delivery tickets or bills of lading must indicate that substitution has occurred. (See also, Monthly Activity Report).

17. **Reports.** The Contractor is required to submit monthly, weekly and daily reports to ADE.
- A. Inbound Shipments Report. The Contractor must report all inbound shipments **within 5 working days** prior to noon (MST), weekdays, **via hard copy**, to ADE. The report must contain both basic commodity and further-processed end product inbound to the Contractor. ADE must be informed of shipments and quantities that will be reviewed for recouping. Recouped final figures shall be reported to ADE's program person (as identified in Section 6) within five (5) days after receipt. (See Exhibit 8.11)
 - B. USDA Receiving Report. The Contractor must complete the report (Exhibit 8.9) on all commodities **within five (5) days of receipt to ADE**. The Contractor shall submit hard copies of internal warehouse receiving reports, including the receiving reports of subcontractors. The report is to be combined with the matching Forwarding Notice, Bill of Lading, and if necessary, the overage/shortage (see Exhibit 8.4) and other related documents. This information must be couriered to ADE. Responsible courier service will alternate weekly between ADE and Contractor.
 - C. Shipping Report. Shipping data will be transmitted to ADE, **via web site**, prior to the 10th of the month following shipment. This information will be verified by ADE monthly. (See Shipping Report, Exhibit 8.8).
 - D. Monthly Activity Report. The Contractor shall submit this report to ADE by the 20th of each month. The report shall be transmitted **via electronic transmission**. The report format shall duplicate ADE monthly reconciliation report and be developed by the Contractor. ADE will review and approve the monthly report format prior to the first usage. The monthly report shall include, at a minimum, the following columns. (Exhibit 8.10)
 - (1) Beginning Balance – Monthly beginning balance must be identical to prior month ending balance.
 - (2) Receiving – Product received directly by USDA as identified on the forwarding notice or further processed commodities shall be recorded on report in month it was received.
 - (3) Dumps - Product determined to be unusable and unfit for human consumption will be indicated in the report in the month product is actually dumped. Monthly reports will indicate a receiving amount when product is replaced
 - (4) Adjustments - An adjustment column is included in the monthly reporting format to allow for damaged and mis-shipped cases returned to inventory during the month or adjustments from the previous month that missed the reporting cutoff date.
 - (5) Closing Balance - The closing balance must reflect all the activity indicated above that has brought the inventory to the current balance. ADE will reconcile the figures with the Contractor **before the 20th of every month** and reconcile the shipping information by CTD and Commodity type.
 - (6) Variances between the State Agency and the Contractor will be resolved **before the end of the month**. Discrepancies can occur in any one of the columns on the reconciliation report. The Contractor shall research, verify and, if necessary, correct data on variances noted by Recipient Agencies.
 - (7) The Contractor shall investigate reasons for ending inventory being a negative number. All negative balances will be adjusted to zero each month, whether or not a reason can be determined.

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- (8) The total number of cases delivered for each COMM CODE must match the total cases delivered for each COMM CODE on the Monthly Report.
- E. The Contractor shall submit hard copy reports through weekly courier service. Upon mutual agreement by both parties, the type or frequency of the reports identified above may be modified to meet the needs of ADE. Reports that must be submitted via hard copy are noted in the description of each report above.
- F. Reports that must be submitted via electronic media are noted in the description of each report above.

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1. **Payments.** The Contractor will be paid by Recipient Agency(ies) upon the submission of proper invoices based on an amount agreed upon between Contractor and the State Agency, as designated in the pricing schedule (see Attachment 7.1).
2. **Invoices.**
 - A. Collection of Fees for Services.
 - (1) Fees for distribution (warehousing and delivery) services will be invoiced to Recipient Agencies by the Contractor. Invoices may be submitted to Recipient Agencies after each delivery or monthly, at the option of the Contractor. Invoices must include a summary of delivery tickets for each delivery site. Referenced delivery tickets shall be listed in numerical sequence and show the total number of units delivered. The fee-for-services will be based on Contract, per-case charge which may be different for different services. For example, there may be different fee for deliveries to food preparation sites or warehouses, or for pick-ups at the Contractor's warehouse.
 - (2) If a Recipient Agency becomes more than sixty (60) days delinquent, the Contractor may suspend deliveries **after due notice and approval by ADE**. Recipients will receive notification from the Contractor prior to a delivery of a hold due to non-payments. **With the approval of ADE**, those accounts with frequent payment delays or insufficient funds checks may be classified as C.O.D. ship or no-ship status until that particular Recipient's payment history improves. The Contractor may charge a late fee of one and one-half percent (1½%) interest to Recipient Agencies not paying within sixty (60) days.
 - (3) The Contractor also may offer a delivery discount incentive program if bills are paid within thirty (30) days by Recipient Agencies.
 - B. Collection of State Administrative Fees.
 - (1) The Contractor shall invoice, collect and remit to ADE, a State Administrative Fee of twenty-five cents (\$0.25) per case, paid by each Recipient Agency, to support State costs. The Contractor shall collect the State Administrative Fee along with the stipulated fee for service. This fee shall be added to the per-case amount as designated in the price schedule (Attachment 7.1). Example: Price per-case + \$0.25 Administrative Fee = Fee Invoiced.
 - (2) Remittance to ADE of the collection of Administrative Fees shall be based on deliveries rather than collections to conform to the Contractor's monthly delivery reports.
 - (3) Accordingly, ADE will invoice the Contractor based on a thirty (30) day interval with invoices due thirty (30) days net, with one to one and one-half percent (1-1½%) surcharge assessed per month, or fraction thereof, to the Contractor for late payments.
 - C. The Contractor shall submit invoices for work that has been performed in accordance with the contract terms and conditions and accepted by Recipient Agency within thirty (30) working days after providing the services. The Recipient Agency shall pay the Contractor within thirty (30) working days of receipt of invoices, provided the invoices include the required information and supporting documentation.
 - D. The Contractor shall invoice only for the actual services performed in conjunction with the requirements of the contract. Invoices may be submitted after each delivery or monthly, at the option of the Contractor.
 - E. Contractor's invoices shall provide the information as defined on the Bill of Lading.

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3. **Mailing of Payments.** Address to which payment should be mailed, if different than that listed on the Offer and Award Form.

US Foodservice, Inc.
2338 Collections Ctr Drive
Chicago, IL 60693

4. Contractor representative to contact for contract administration purposes:

Michelle Anderson, C.S. Manger
4650 W. Buckeye Road
Phoenix, AZ 85043
Phone: (602) 352-2299

5. The ADE representative to contact for technical matters concerning contract performance (NOTE: this person is not authorized to direct contractor performance or make changes in contract requirements.)

Mary Szaranski, Program Director
Department of Education
Food Distribution Program
1535 West Jefferson Street, Bin #7
Phoenix, Arizona 85007
Phone: (602) 542-8781
Facsimile: (602) 542-3818

6. All contract administration matters will be managed by the Procurement Officer named below. All correspondence concerning this contract shall be directed to this individual.

Roely Scholte, CPPB
Procurement Officer
Department of Education
Contracts Management Unit, Bin #37
1535 West Jefferson Street
Phoenix, Arizona 85007
Phone: (602) 542-1320
Facsimile: (602) 542-3359